

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

**PUBLIC NOTICE – COMMENT SOUGHT ON DATA SPECIFICATIONS FOR  
COLLECTING STUDY AREA BOUNDARIES**

**COMMENTS OF  
ALEXICON TELECOMMUNICATIONS CONSULTING**

## INTRODUCTION

Alexicon Telecommunications Consulting (Alexicon) hereby submits its Comments to the Federal Communications Commission (Commission) in response to the Wireline Competition Bureau's (WCB) June 1, 2012 Public Notice seeking comments on data specifications for collecting study area boundaries.<sup>1</sup>

Alexicon provides professional management, financial and regulatory services to a variety of small rate-of-return Incumbent Local Exchange Carriers (ILECs) who serve diverse geographical areas characterized by rural, insular or Native American Tribal Lands. These ILECs, similar to most other small rate-of-return regulated ILECs, currently provide a wide range of technologically advanced services to their customers. These companies, through participation in various State and Federal high cost funding programs, and with their continued investment in network infrastructure, are providing customers in rural, insular and Tribal areas with services equal to or greater than urban areas, and at comparable pricing. Furthermore, these ILECs have been committed to providing their customers with innovative solutions, by adapting technologies that fit rural America, including Broadband and IP-enabled services. Alexicon has been actively involved in reviewing, analyzing, and interpreting the many changes resulting from the Commission's ICC/USF Order<sup>2</sup>, including the issues addressed in the Public Notice.

## SUMMARY

As the WCB notes, the subject matter of its June 1, 2012 Public Notice is of critical importance to several of the Commission's reforms to the Universal Service Support regime. It is therefore of critical importance that the Commission proceeds in a reasonable, orderly, and cautious manner, or it risks exacerbating several of the already severe problems identified with efforts

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<sup>1</sup> Public Notice, *Comment Sought on Data Specifications for Collecting Study Area Boundaries*; WC Docket Nos. 10-90, *In the Matter of Connect America Fund* and 05-337, *In the Matter of High-Cost Universal Service Support*; Released June 1, 2012 (Public Notice)

<sup>2</sup> Report and Order and Further Notice of Proposed Rulemaking In the Matter of Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208, released November 18, 2011. (*ICC/USF Order*)

undertaken to date to identify accurate study area boundaries for rural, rate of return (RoR) local exchange carriers. In fact, the Study Area Boundary data is of such vital importance, and the data collected thus far is of questionable quality and credibility, that Alexicon believes the Commission should immediately delay implementation of any rules dependent on such information.

### **I. Accurate Study Area Boundary Data is Vital for RoR LECs**

As the WCB noted in the Public Notice, study area boundary data is used for multiple reasons, two of which are particularly important to many RoR LECs: 1) a vital input for the Commission's so-called benchmarking rule that purports to limit certain recoverable capital and operating expenses that exceed a statistically-determined threshold<sup>3</sup>; and 2) an important determining factor in whether an RoR LEC's support should be eliminated or revised in cases where its study area is 100% (or less) overlapped by unsubsidized competition.<sup>4</sup> These two policies have been the subject of considerable controversy, not the least of which is tied directly to woefully inadequate study area boundary data.<sup>5</sup>

It has been well documented that the study area boundary data used in the Commission's Quantile Regression Analysis (QRA)-based methodology to limit universal service support recovery of certain levels of operating and capital expenses is replete with errors.<sup>6</sup> The facts contained in the Rural Associations' petition, along with the acknowledgement by the WCB that "concerns remain regarding inaccuracies in this data set"<sup>7</sup> leads to the conclusion that the Commission should proceed carefully in gathering accurate, reliable, and predictable study area boundary data.

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<sup>3</sup> Public Notice at 2

<sup>4</sup> Id at 4

<sup>5</sup> See Requests filed by West River Cooperative Telephone Company (April 10, 2012) and Kennebec Telephone Company (June 14, 2012) to correct erroneous study area boundary data

<sup>6</sup> See e.g., Application for Review of National Exchange Carrier Association, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance (Rural Associations), filed May 25, 2012, at 6

<sup>7</sup> Order, WC Docket Nos. 10-90, Connect America Fund and 05-337, High Cost Universal Service Support, DA 12-646 (rel. April 25, 2012) at 27 (*Benchmarking Order*)

Many RoR LECs will also be impacted by the Commission's new rule that high cost support should be eliminated or reduced in cases where the incumbent's study area is either 100% overlapped by unsubsidized competition, or is partially overlapped by unsubsidized competition. A major driver of the implementation of this policy will of course be accurate and reliable study area boundary data and, indeed, data below the study area level. To date, the efforts to produce such data for RoR LEC study areas in an efficient manner have been unsuccessful, and indeed the WCB has yet to release its final methodology for determining areas of overlap or publish its list of companies for which there is a 100% overlap.<sup>8</sup> The Commission needs to gather data that is as accurate as possible prior to implementing a rule with such potentially devastating consequences.

## **II. States Must be Included in the Data Gathering Process**

As the WCB correctly notes, state commissions and tribal governmental entities generally are the entities that establish incumbent LECs' service areas.<sup>9</sup> Given this conclusion, it is reasonable that any collection of study area boundary data begin at the state level, as many state commissions, state telecommunications associations, tribal nations, and other entities may already have the needed information.

Regardless of where and how the Commission ultimately decides to collect study area boundary data, one thing is clear – it must do so with a minimum of costs incurred by RoR LECs. As with many new policies and methodologies adopted in the *ICC/USF Transformation Order*, the Commission is asking RoR LECs to “do more with less.” In the instant case, the collection of electronic study area boundary maps, in “ESRI” compatible shapefile or any other format<sup>10</sup>, has the potential of becoming a regulatory morass of epic proportions. If, for example, a company or group of companies will be forced to undergo a process for converting current maps to the WCB's favored format, it would take substantial time and cost to do so. Forcing RoR LECs to incur substantial costs for the purpose of potentially reducing support even further, besides being counterintuitive, strikes at the heart of basic regulatory fairness – a reasonable opportunity to

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<sup>8</sup> *ICC/USF Order* at 284

<sup>9</sup> *Public Notice* at 8

<sup>10</sup> *Id* at 5

recover all prudently incurred costs. As the Commission is well aware, it has increased the scope of the Corporate Operations Expense cap<sup>11</sup>, and has extended the cap to Interstate Common Line Support (ICLS).<sup>12</sup> These are the type of expenses that the Commission is forcing RoR LECs to incur in order to produce study area boundary maps.

### **III. The Commission Should Immediately Halt Implementation of Rules that Depend Upon Study Area Boundary Data**

It is clear that the current methods being used to identify study area boundaries, particularly in regards to the Commission's Benchmarking Rule, are inadequate and produce unreliable and erroneous results. Consider this statement by East Ascension Telephone Company:

One example of the use of inaccurate data that has a detrimental effect cascading through the Bureau's methodology is the use of census block "centroids" to determine which census blocks should be assigned to each LEC study area. Rather than using actual study area boundaries in its analysis, the Bureau used census block footprints, assigning each census block to the study area based on the wire center where the census block centroid is located. This single decision impacted the quality of several of the independent variables used in the QRA, including the study area square miles, the number of road miles in each study area, and the number of road crossings in each study area. These variables, in turn, were essential in calculating additional variables used by the Bureau, including study area scale, geographic variables such as proximity to bedrock, and construction values. Where such a significant number of independent variables are unreliable, the entire data set may be useless, as each carrier's costs per loop are compared to those of all the other LECs.<sup>13</sup>

The WCB itself strongly implies that the current method of identifying relevant study area data is producing incorrect results by its adoption of an expedited waiver process for carriers who believe study area boundary data is in error.<sup>14</sup> In fact, the WCB has granted two such waivers already.<sup>15</sup> As succinctly stated by the Rural Associations, "It is arbitrary and capricious for the

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<sup>11</sup> ICC/USF Order at 232

<sup>12</sup> ID at 229

<sup>13</sup> EATel Application for Review of Action Taken Pursuant to Delegated Authority, WC Docket Nos. 10-90, Connect America Fund, and 05-337, High-Cost Universal Service Support, (filed May 25, 2012) at p. 5 (internal footnotes removed)

<sup>14</sup> Benchmarking Order, Appendix C

<sup>15</sup> Order, WC Docket Nos. 10-90 and 05-337 (rel. June 26, 2012). This order grants requests filed by West River Cooperative Telephone Company and Kennebec Telephone Company.

Commission to permit these regression formulas to be used when the underlying model contains significant errors. Reviewing courts do not owe judicial deference to agency determinations that are based upon data that the agency knows are incorrect.”<sup>16</sup>

#### **IV. Conclusion**

While the WCB rightly acknowledges the necessity for collecting comprehensive, accurate, and reliable study area boundary data from all ILECs, due in large part to the inadequate methods utilized to date, the fact that current methods are apparently being completely scrapped speaks volumes as to the negative and arbitrary results being produced. However, these arbitrary and in many instances unreasonable results are having real impacts on RoR LECs. Until such time as the Commission can gather accurate, reliable, and predictable study area boundary data, it should suspend all efforts to implement any rules that utilize the data in question.

Respectfully Submitted,

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July 2, 2012

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<sup>16</sup> Rural Associations Application for Review at p. 7 (internal footnotes removed)